

Obsolete. Please consult current Florida law.

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Municipal Elections; Ballots and Counting of Ballots Sections 101.36 and 101.041, Florida Statutes

To: Honorable Ann Robinson, Supervisor of Elections, Indian River County, Suite N- 109, 1840 25 Street, Vero Beach, Florida 32960-3394

Prepared by: Division of Elections

This is in response to your request for an advisory opinion from the division as to whether a municipality, when using the county punch card voting booths and punch cards in an election, may count the punch card ballots by hand.

The Florida Election Code, Chapters 97-106, Florida Statutes, recognizes three types of ballots for elections: paper ballots, voting machine ballots, and punch card ballots. Section 97.021(4), Florida Statutes. Paper ballots are counted manually; voting machine ballots are tabulated automatically by the voting machine; and punch card ballots are tabulated automatically by electronic or electromechanical counting devices. Section 97.021(4), Florida Statutes.

Section 101.36, Florida Statutes, provides that in counties with a population of more than 260,000 according to the latest federal census and, which have adopted voting machines or electronic or electromechanical voting, it is mandatory for all municipalities to use the same type of voting equipment as the county in all elections; however, in all counties with a population less than 260,000, it is optional with each municipality whether to use ballots or voting machines or devices in its election. According to the Florida Almanac, Indian River County in the 1980 Federal Census had 59,896 residents. Therefore, each municipality in Indian River County has the option of using ballots or voting machines or devices in an election. However, Section 101.041, Florida Statutes, provides that in an election where municipal officers are chosen, "the voting shall be by secret, official ballot... and no vote shall be received or counted in an election except as prescribed by this code."

The Electronic Voting Systems Act, Sections 101.5601 through 101.5615, Florida Statutes, authorizes "the use of electronic and electromechanical voting systems in which votes are registered electronically or tabulated on automatic tabulating equipment or data processing equipment." Section 101.5602, Florida Statutes. The ballots used in the electronic voting systems are intended to be registered electronically or tabulated on automatic tabulating equipment or data processing equipment and not counted manually. For example, electronic or electromechanical voting system is defined as:

[A] system of casting votes by use of voting devices or marking devices and counting ballots by employing automatic tabulating equipment or data processing equipment.

Section 101.5603(4), Florida Statutes.

Marking device is defined as:

[A]n approved apparatus used for the piercing of ballots by the voter or any approved device for marking a ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

Section 101.5603(5), Florida Statutes.

In addition, there are no statutory provisions for using electronic or electromechanical ballots without counting the ballots on the automatic tabulating equipment or data processing equipment unless the ballots are damaged and must be counted manually or unless there are write-in candidates. Sections 101.5614(4) and (5), Florida Statutes.

SUMMARY

It is the division's opinion that if the municipality uses a ballot designed for electronic or electromechanical system, the ballot must be tabulated electronically or electromechanically except as otherwise provided in Section 101.5614, Florida Statutes. If the municipality wants to count ballots manually and there are candidates running for office in the election, the municipality must use the standard paper ballot. If the municipality uses punch card ballots, the ballots must be counted electronically or electromechanically.